

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ANGELA M.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND H.M.,
Appellees.

No. 2 CA-JV 2019-0018
Filed October 29, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20160545
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Eppich concurred.

S T A R I N G, Presiding Judge:

¶1 Appellant Angela M. challenges the juvenile court's order of January 28, 2019, terminating her parental rights to H.M., born August 2016, on grounds of Angela's mental illness and failure to remedy the circumstances that caused H.M. to be in court-ordered, out-of-home care for fifteen months or more. *See* A.R.S. § 8-533(B)(3), (B)(8)(c). On appeal, Angela challenges the court's finding that the Department of Child Safety (DCS) had provided diligent efforts toward reunification and the sufficiency of the evidence that terminating her parental rights was in the child's best interests. We affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 DCS took H.M. into custody shortly after his birth based on hospital reports that Angela had stated she "wanted to have her baby on Mt. Lemmon and sell it there" and that she had "shaken the baby, jiggled his head, and slapped him on the head." Angela reported having been diagnosed with bipolar disorder, but stated she had not taken medication since 2013. DCS initially offered various services, including supervised visitation, a psychological evaluation, individual counseling, behavioral health services, and parenting classes.

¶4 The juvenile court adjudicated H.M. dependent in January 2017 and ordered that Angela participate in therapy with a doctoral-level

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therapist. Angela began therapy, but the therapist, Sherri Mikels-Romero, did not have a Ph.D., although no one realized that at the time. By June 2017, Angela had been making progress in therapy, but her parent-child relationship therapist and parent aide continued to be concerned about her ability to parent, particularly after H.M. fell out of a highchair when Angela failed to secure him.

¶5 In August 2017, it was discovered that Mikels-Romero did not have a Ph.D., but because Angela liked her and was making progress, the DCS team decided that she should continue with Mikels-Romero. Angela reported taking less of her medication than was prescribed, and, by September, she was unsuccessfully closed out of parent-aide services. At a review hearing in October, Angela objected to the reunification services on the ground that DCS had not provided a doctoral-level therapist. DCS referred her to Dr. Elena Parra, and services with her began in November 2017.

¶6 Angela's parent-child therapist reported she had not demonstrated progress in caring for H.M. and from late 2017 to early 2018 Angela began cancelling or arriving late to sessions. By April 2018, the family case manager reported that Angela continued to make progress with Dr. Parra but that she had not yet demonstrated substantial benefits from services and still could not safely parent H.M.

¶7 In May, Angela stopped attending her parent-child therapy and reported consistently failing to take a full dose of her medication. She had also given H.M. food that posed a choking hazard and had left him unattended on the changing table and in the bathtub. DCS filed a motion for termination in August 2018 on the grounds of Angela's mental illness and the length of time H.M. had been in out-of-home care. After a six-day contested severance hearing, the juvenile court granted the motion.

¶8 On appeal, Angela contends DCS failed to make reasonable reunification efforts by initially failing to provide the doctoral-level therapist the juvenile court ordered. Because fundamental interests are involved in mental-illness-based severances as well as in those based on the length of time a child is in care, DCS is required to "demonstrate that it has made a reasonable effort to preserve the family." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶¶ 33-34 (App. 1999). Angela argues that DCS's failure to provide the doctoral-level therapist indicated in Angela's psychological evaluation and ordered by the court and its decision to continue Angela with the therapist upon discovery that she lacked the

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recommended degree fell short of the efforts required before severance may occur.

¶9 In support of her argument, Angela cites the juvenile court's decision in October 2017 that DCS had not made reasonable efforts based on its failure to provide the appropriate therapist. She argues that this failure "should not inure to [her] detriment" and "illuminates systematic defects within DCS." But, as DCS argues, Angela has not "explained how the delay actually hindered her from reunifying with [H.M.]." Nor has she identified any other failures of DCS of a "systematic" nature in this case.

¶10 Angela had been in treatment with Dr. Parra for over a year by the time of the severance hearing. Even accepting that DCS's initial failure to provide an adequately trained therapist at the outset of the case was insufficient to meet its obligation to provide reasonable efforts, it remedied that failure. We cannot say on the record before us that the juvenile court abused its discretion in determining DCS had provided "specific and meaningful services" "to remedy the concerns that caused the removal of the child."

¶11 Angela also argues the juvenile court abused its discretion in concluding termination of her parental rights was in H.M.'s best interests. "To establish that severance of a parent's rights would be in a child's best interests, 'the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the parental relationship.'" *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ¶ 26 (App. 2011) (quoting *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18 (App. 1998)).

¶12 The juvenile court determined that H.M. would benefit from termination of Angela's parental rights based on her failure to remedy the situation that caused H.M. to be in care for an extended period of time, including managing her mental health issues. The court also found that H.M. was in a placement that was meeting his needs and was "willing to adopt the child and provide him with a permanent home." In making her argument, Angela relies on favorable testimony, particularly that of Dr. Parra, who testified favorably about Angela's ability to parent. But she does not address the contrary evidence cited by the court. We do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002), and will defer to the court's resolution of conflicting inferences when, as here, they are supported by the record, *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115 (1978).

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¶13 We affirm the juvenile court's order terminating Angela's parental rights.